

JAPAN

1. Discriminatory family code

The Civil Code of Japan guarantees that no marriage shall be entered into without the free and full consent of the intending spouses; provides that married couples jointly share legal responsibility for financially maintaining the family's expenses; and prohibits bigamy. Article 731 of the Civil Code sets the **minimum age of marriage** at 20 years for boys and 16 for girls. The age of majority is 20 in Japan. Parental consent is therefore required for boys marrying between the ages of 18 and 20 and, for girls between the ages of 16 and 20 (for girls).

Concerning **early marriage**, the United Nations (UN) reports that, based on 2010 data, 0.6% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 0.3% of boys in the same age range.¹ The law does not officially recognize any customary laws or personal laws. While there is evidence that customary practices are still carried out in minority communities, such as the Buraku and Ainu peoples,² information is lacking on what effect that has on gender equality in age of marriage.

Under the Civil Code both parents share **parental authority** during marriage and in cases of **divorce**.

Equal **inheritance rights** for sons and daughters are enshrined in the Civil Code.³ The Food and Agriculture Organization (FAO) reports that traditional patrilineal inheritance practices have all but disappeared in current times.⁴ However the Civil Code directly discriminates against children of women who were unmarried at the time of their birth, who may only inherit one half of that of a sibling born in wedlock.⁵ Although the Supreme Court ruled the clause unconstitutional in 2013, and the Civil Code was amended subsequently. However the government still has not amended the family registration law and other relevant regulations which oblige parents to inform the government if a child is “legitimate” or “non-legitimate”.

Despite these legal protections, the CEDAW Committee commented in 2009 on the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society in Japan.⁶

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¹ UN (2012)

² Japan NGO Network for CEDAW (2009), p.32-42

³ Civil Code [Law No. 89 of 1896], Arts. 2, 887(1), 898, 899 and 900

⁴ FAO (n.d)

⁵ Civil Code [Law No. 89 of 1896], Article 900 of the Civil Code

⁶ CEDAW (2009), p.6

Under the Civil Code both men and women have equal **rights to initiate divorce** in Japan. The court decides marital property division, and the Civil Code provides for valuation of nonmonetary contributions made during marriage.⁷ However, women are not allowed to remarry for six months after divorce.⁸

2. Restricted physical integrity

Domestic violence against women is illegal under the Law for the Prevention of Spousal Violence and the Protection of Victims,⁹ which makes physical and psychological abuse unlawful, including in current and ex de facto relationship. The Act was amended in 2007 to expand the scope of protection orders, and prohibit behaviours such as phone calls.¹⁰ In addition, the Government provides publicly funded protection shelters for short-term stays.¹¹ However, the Act has been criticized for failing to cover same-sex or non-co-habiting couples.¹² Other weaknesses include that charges will only be laid if the victim volunteers to press charges; and that criminal punishment will only occur if the victim suffers a physical assault. If the victim has not suffered any injury as a result of the assault, the perpetrator shall be punished by imprisonment with work for not more than two years, a fine, imprisonment without work or a petty fine.¹³

Implementation of the law on domestic violence remains weak. For example, violators of protection orders are not always arrested or prosecuted, except for serious cases. Additionally, court judgments that require compensation to be paid to victims or child support for mothers are not strictly enforced.¹⁴ There is no official prevalence data on domestic violence in Japan, although 2005 data from WHO indicates that 4% of Japanese women had experienced partner violence in the last year: one of the lowest rates in the region.¹⁵ Public attitudes may be responsible for these relatively low rates: since the same study revealed that, while almost 10% of women surveyed agreed that wife-beating was justified in the case of unfaithfulness, 80% accepted none of the six suggested reasons why such violence might be acceptable.¹⁶

However, domestic violence prevalence increases for marginalised women and girls. NGOs report that women of ethnic minorities and migrant women without stable resident status are made further vulnerable to violence, as gender-based discrimination is closely tied to discrimination based on race and nationality.¹⁷ While the revised Spousal Violence Act, stipulates that state agencies and local governments should provide support for victims of

⁷ Civil Code [Law No. 89 of 1896], Art. 768(3)

⁸ World Organization against Torture (2008), p.10

⁹ The Law for the Prevention of Spousal Violence and the Protection of Victims [Law No. 31 of 2001]

¹⁰ http://www.gender.go.jp/english_contents/mge/violence/act.html.

¹¹ Japan NGO Network for CEDAW (2009), p.13.

¹² Japan NGO Network for CEDAW (2009), p.13

¹³ Penal Code [Act No. 45 of 1907], Art. 204

¹⁴ Japan NGO Network for CEDAW (2009), p.13

¹⁵ WHO (2005)

¹⁶ WHO (2005) Figure 5

¹⁷ World Organization against Torture (2008)

domestic violence regardless of their nationality or residency status,¹⁸ NGOs report that the protection of victims is not necessarily prioritized over the immigration control.¹⁹

Rape is defined in Article 177 of the Penal Code, as is the crime of gang rape (Article 178). However, the law contains a restrictive definition of 'rape' comprising only of vaginal intercourse involving force or threats. The Penal Code also identifies separate and lesser crimes of Forcible Indecency²⁰, Quasi Forcible Indecency,²¹ and Quasi Rape,²² which involve taking advantage of a women's semi-conscious state or inability to resist.²³ Punishments for rape range from 3 to 20 years; gang rape from 4 to 20 years; and Forcible Indecency from 6 months to 10 years. There is no explicit provision criminalizing marital rape in Japan.²⁴ There is case law to include marital rape as rape (criminal offence) under the Criminal Code; a victim of violence in a same-sex couple is eligible for a protection order under the Spousal Violence Act.

Advocates have criticized the law for shifting the burden onto the victim to prove that there was no clear agreement to have sex, which, it is argued, typically leads to an expectation that the victim will show evidence of having resisted attack.²⁵ Punishment for forcible indecency ranges from six months to ten years, and rape is punished for a minimum of three years.²⁶ The punishment for gang rape is not less than four years. These sentences have been identified as inadequate, particularly as they are in fact lighter than sentences imposed for robbery.²⁷

In order to encourage and assist sexual violence survivors to report crimes, the police agency in each prefecture offers a hotline service. There is also a public women's consultation office to provide victims with counselling.²⁸ However, there are no protection shelters where rape victims can stay for a short period, nor are there any 24-hour rape crisis centres to provide counselling and immediate medical treatment.²⁹ There is evidence that sexual violence continues to go under-reported, a fact which has been linked by NGOs to a lack of trust in the justice system; prejudices held by police, prosecutors and judges; and re-victimizing judicial processes, such as the consideration of the victim's past sexual history as part of the investigation and trial process.³⁰

Nevertheless, violence against women, including sexual violence, remains a significant problem in Japan. There is very little official prevalence data collected by the Government on any form of gender-based violence.³¹ However, a recent WHO survey indicates that, 15% of ever-partnered

¹⁸ World Organization against Torture (2008), p.38

Japan NGO Network for CEDAW (2009), p.13

²⁰ Penal Code [Act No. 45 of 1907], Art. 176

²¹ Penal Code [Act No. 45 of 1907], Art.178-1(1)

²² Penal Code [Act No. 45 of 1907], Art.178-1(2)

²³ World Organization against Torture (2008), p.16

²⁴ CEDAW (2009), p.7

²⁵ World Organization against Torture (2008), p.14

²⁶ Penal Code [Act No. 45 of 1907], Arts. 176, 177

²⁷ World Organization against Torture (2008), p.14

²⁸ CEDAW (2008), p.21

²⁹ World Organization against Torture (2008), pp.35-36

³⁰ Japan NGO Network for CEDAW (2009), p.9

³¹ CEDAW (2009), p.8

women reported experiencing physical or sexual violence, or both, at some time in their lives.³² NGOs report that sexual violence against women in detention is also a problem in Japan.³³ Additionally, the incidence of violence against women and girls around US military bases is also reported to be significantly high, although access to justice for these victims is limited. One NGO estimated that only 26% of all sexual crimes committed by off-duty US soldiers are ever prosecuted.³⁴ The Japanese Government is also yet to provide justice or reparations for the “comfort women”, used as military sexual slaves during the Second World War.³⁵

Sexual harassment remains a problem in Japanese workplaces, despite being outlawed by the Law on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment enacted in 1985. Although a 2006 revision made it the responsibility of employers to take necessary measures to prevent sexual harassment in the workplace, the penalty for employers who fail to take adequate measures remain very weak, and are limited to publicizing the names of offending companies.³⁶) Equal Employment Opportunity Law (EEO) was enacted in 1985, however it introduced a provision on anti-sexual harassment in 1999. EEO provides administrative sanctions, and apart from EEO, sexual harassment is subject to monetary compensation and criminal offense under other civil and criminal legislations.

There is no evidence that **female genital mutilation** is practised in Japan.

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Japan has been identified as a destination country for women subjected to forced **prostitution** and forced labor, including forced marriage.³⁷ In order to combat the practice, Japan has comprehensively criminalized all **trafficking**-related activity, although the definition of trafficking is limited. These efforts do not fully comply with the minimum international standards for action according to the U.S. Department of State’s Trafficking in Persons Report.³⁸ The government especially failed to develop trafficking-specific victim assistance measures, continuing instead to rely on inadequate prefectural-level domestic violence shelters.³⁹ NGOs have also linked the restrictive migration policies, to the vulnerability of migrant women to trafficking, sexual exploitation and domestic violence.⁴⁰

Regarding women’s reproductive autonomy, **abortion** is criminalized in Japan under the Penal Code⁴¹; except in cases where a medical practitioner deems that the pregnancy could cause damage health for physiological or economic reasons, or in the case of pregnancy caused by

³² WHO (2005)

³³ World Organization against Torture (2008), p.22, 24

³⁴ Japan NGO Network for CEDAW (2009), p.10

³⁵ CEDAW (2009), p.8

³⁶ World Organization against Torture (2008), p.18

³⁷ US State Department (2013b)

³⁸ US State Department (2013b)

³⁹ US State Department (2013b)

⁴⁰ World Organization against Torture (2008), p.11

⁴¹ Penal Code [Act No. 45 of 1907], Art. 212

violence or intimidation.⁴² The Maternal Protection Law requires a woman who seeks an abortion to obtain the authorization of her male partner.⁴³

United Nations figures from 2005 indicate that 44.4% of women used some form of modern contraceptive.⁴⁴ NGOs report that emergency contraceptives are rarely used.⁴⁵

3. Son Bias

The male-to-female **sex ratio** at birth in 2013 is 1.06 and for the working age population (15-64 years old) is 1.⁴⁶

There is no evidence to suggest that Japan is a country of concern in relation to **missing women**.

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Data on infant mortality in Japan does not suggest a son bias. Roughly equal numbers of girls enroll in both primary and secondary schooling.⁴⁷ Although anecdotal evidence from NGOs indicates that girls from minority Buraku communities may be less likely attend school, in preference to their brothers.⁴⁸ According to 2006 data from UNDP, infant mortality rates are slightly higher for boys under five (0.4%) than girls (0.03%).⁴⁹

4. Restricted Assets and Resources

Women in Japan have the right to non-discrimination in the **ownership and access to land**. There is limited data available in terms of women's ownership of property and land in the society in general. However there is evidence that some gender disparities continue to exist in the agricultural centres. Women farmers make up 60% of the entire farming population. Their representation in the boards of agricultural committees or agricultural cooperatives is still very low.⁵⁰

Under the Civil Code women also have the right to non-discrimination in relation to **non-land assets**, and have equal rights to property regardless of their marital status. UNDP cites Government survey data that indicates that women's home ownership rates increased by 2.2% between 1998 and 2003.⁵¹

Women in Japan have the equal right to freely enter into contracts, **access financial services** and apply for bank loans and other types of credit. According to 2011 World Bank data, women were marginally more likely to have an account with a financial institution (96.8%, versus 96% of

⁴² The Maternal Protection Law, Art.14

⁴³ Japan NGO Network for CEDAW (2009), p.21

⁴⁴ UN (2012b)

⁴⁵ Japan NGO Network for CEDAW (2009), p.21

⁴⁶ CIA (2014)

⁴⁷ UNICEF (n.d)

⁴⁸ Japan NGO Network for CEDAW (2009), p.32

⁴⁹ UNDP (2010), Table 6

⁵⁰ Japan NGO Network for CEDAW (2009), p.22

⁵¹ UNDP (2010), p.43

men), but were less likely to have obtained a loan from a financial institution (3.5% of women, compared with 8.9% of men) in the previous year.⁵² In 2009 the Government reported that it provided some low interest loans for female entrepreneurs.⁵³

5. Restricted Civil Liberties

Under the Constitution women enjoy **access to public space**, such as freedom of assembly, freedom of expression, and collective action in Japan, and there is no evidence that there is institutional discrimination against women's associations or NGOs. Although there have been no reports of very serious cases of violence involving physical attacks, women's rights advocates, particularly those working for redress for the "comfort women," often receive threatening phone calls or are harassed and attacked through the internet.⁵⁴

Women's participation in policy and decision-making processes in Japan is still low. In 2011 the Government cited numerous reasons for women's low political participation including: limited action by the Government; customary personnel practices based on the traditional working style of men including prolonged work hours; and discontinuation of women's career due to childcare or other domestic matters.⁵⁵ Women continue to be under-represented in political life. In 2012 women made up 8.1% of elected members of the upper house, and 16.1% of seats on the senate.⁵⁶ The United Nations Development Fund has suggested that party leaders, who chose candidates, rather than the rank and file, are typically the upholders of party traditions, which preference male leadership.⁵⁷ Women's public participation is also affected by what NGOs have identified as a recent "gender backlash" that has caused significant setbacks in the government policy for gender equality.⁵⁸ Although the Government announced that it had set a target for increasing the share of women in leadership positions to at least 30% by 2020 in the Third Basic Plan for Gender Equality,⁵⁹ no specific legislative measures, such as **quotas**, have been adopted for the achievement of this target.

In December 2009, the proportion of female members in local assemblies was 8.1% for prefectural assemblies (compared to 8.2% in December 2007), 12.4% in city councils (compared to 11.8% in December 2007), and 17.4% in ordinance designated cities (compared to 17.2% in December 2007), while the proportion of female members in town and village assemblies was 8.1% (compared to 7.8% in 2008) and 24.8% in special wards (compared to 24.9% in 2008).⁶⁰

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With respect to women's **workplace rights**, the Act on Securing Equal Opportunity and Treatment between Men and Women in Employment prohibits direct discrimination such as

⁵² World Bank (2011)

⁵³ CEDAW (2008), p.38

⁵⁴ World Organization against Torture (2008), p.7

⁵⁵ CEDAW (2011), p.3

⁵⁶ IPU (2014)

⁵⁷ UNDP (2010)

⁵⁸ New Japan Women's Association (NJWA) (2009), p.2

⁵⁹ CEDAW (2011)

⁶⁰ Japan Federation of Bar Associations (2011), p.13

termination, on the grounds of sex, pregnancy, or maternity. **Maternity leave** benefits are payable to women workers who are insured under either the Employment Insurance Act or the National Health Insurance Law. The currently available allowance is paid at approximately 66.67% of the average daily basic wage, according to wage class, for a period of 42 days before birth and 56 days after the expected date of childbirth.⁶¹

Additionally, the Law on Child Care and Family Care Leave stated that workers who are raising children under 12 months old are eligible for **childcare leave**.⁶² These legal guarantees do not apply to domestic workers. However, there is some question about the effectiveness of these maternity protections, as data from 2009 indicates that 70% of Japanese female workers stop working on the occasion of their pregnancy or childbirth.⁶³ A 2010 study by Goldman Sachs found that obstacles to higher female employment include insufficient childcare and nursing care support, tax distortions, inadequate focus of the private and public sectors on diversity, and rigid immigration laws.⁶⁴

Both men and women have the ability to obtain a passport and transfer **citizenship** to their children.⁶⁵

⁶¹ Employment Insurance Act 1974, Arts. 61-4(1), 61-5; National Health Insurance Law 1938, Art. 8-(14)

⁶² Japan NGO Network for CEDAW (2009), p.19

⁶³ Japan NGO Network for CEDAW (2009), p.19

⁶⁴ Goldman Sachs (2010), p.3

⁶⁵ Nationality Act [Law No.147 of 1950], Art. 2

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